Supreme Court, U.S.
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No. 92-1442

In the Supreme Court of the United States

OCTOBER TERM, 1992

ADALINE B. GARCIA AND DARNELL GARCIA,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether the court of appeals lacked jurisdiction over an appeal from an *in rem* forfeiture proceeding after the *res* was released from the district court's control and deposited in the United States Treasury.

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OPINIONS BELOW

The order of the court of appeals (Pet. App. A1) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on May 8, 1992. A petition for rehearing was denied on October 27, 1992. Pet. App. A2. The petition for a writ of certiorari was filed on January 25, 1993. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. On June 13, 1989, the United States filed an *in rem* action in the United States District Court for the Central District of California seeking forfeiture under 21 U.S.C. 881 of real property located at 22 Santa Barbara Drive, Rancho Palos Verdes, California. On June 26, 1989, petitioners filed a claim to the property. Home Savings of America also filed a claim asserting that it had a lien on the property. While the forfeiture action was pending, the parties agreed to an interlocutory sale of the property. After payment of the lien held by Home Savings, the remaining proceeds from the sale, $556,493.28, were deposited with the court as a substitute *res*. Pet. App. A4-A5.

On July 1, 1991, the United States moved for partial summary judgment. On August 9, 1991, the district court granted the government's motion, holding that the government was entitled to recover 72 percent of the selling price of the property or $770,400. Pet. App. A5.

2. Petitioners filed a notice of appeal and sought a stay in the district court of the order granting summary judgment, but they did not post a supersedeas bond. Before the district court acted on the request for a stay, the government transferred the *res* to the United States Treasury. The district court denied the motion for a stay.

The government then moved to dismiss petitioners' appeal of the district court's order granting summary judgment. The court of appeals granted the motion. It relied on its decision in *United States* v. *$84,740.00, U.S. Currency*, 900 F.2d 1402, 1404 (9th Cir. 1990), which held that removal of the *res* from the district where the forfeiture action was brought following entry of a valid decree of forfeiture terminates the court's control over

the property and deprives the court of appeals of jurisdiction. Pet. App. A1.

ARGUMENT

Petitioners ask (Pet. 6-9) the Court to grant the petition for a writ of certiorari, vacate the decision of the court of appeals, and remand for further consideration in light of *Republic National Bank* v. *United States*, 113 S. Ct. 554 (1992). Because the decision in *Republic National Bank* rejected the reasoning on which the court of appeals relied in dismissing petitioners' appeal, we agree with petitioners that the court of appeals' judgment should be vacated and the case remanded to the court of appeals.

In *Republic National Bank*, as in this case, the district court granted judgment for the government on a complaint seeking *in rem* forfeiture of property in which the petitioner claimed an interest. The claimant filed a timely notice of appeal, but failed to file a supersedeas bond or obtain a stay of the district court's judgment. The government transferred the *res* from Florida to the United States Treasury, and then moved to dismiss the appeal on the ground that the removal of the *res* from the judicial district deprived the court of appeals of jurisdiction. The court of appeals granted the motion and dismissed the appeal. This Court reversed and remanded. The Court held that "in an *in rem* forfeiture action, the Court of Appeals is not divested of jurisdiction by the prevailing party's transfer of the res from the District." 113 S. Ct. at 559-560.

The reasoning of *Republic National Bank* is applicable in this case. Here, as in *Republic National Bank*, the court of appeals relied on the removal of the *res* from the control of the district court as a ground for dismissing the claimant's appeal. That reasoning in no longer valid in light of the Court's decision in *Republic*

National Bank. Accordingly, the Court should vacate the court of appeals' decision and remand for further proceedings consistent with *Republic National Bank*.

CONCLUSION

The petition for certiorari should be granted, the decision of the court of appeals should be vacated, and the case should be remanded for further consideration in light of *Republic National Bank* v. *United States*, 113 S. Ct. 554 (1992).

Respectfully submitted.

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